

RIGHTS-OF-WAY USE AGREEMENT

This Rights-of-Way Use Agreement (the "Agreement") is executed as of the ____ day of February 2012, between FiberLight, LLC ("FiberLight"), a Delaware limited liability company, and THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, (the "City"), a municipal corporation.

WITNESSETH

WHEREAS, FiberLight will offer telecommunications services to customers located in Rockville, Maryland; and

WHEREAS, FiberLight desires to place communications facilities underground within conduits, ducts, mains and/or pipes and overhead on poles, which communications facilities are or will be located under and on rights-of-way controlled by the City; and

WHEREAS, the City is willing to permit, under certain conditions set forth herein, the construction of a communications system and placement of communications facilities on the rights-of-way controlled by the City.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

1. Before constructing or placing communications facilities on or in the rights-of-way controlled by the City, FiberLight shall make application in the form of Exhibit "A" and receive a permit therefor in the form of Exhibit "B." Prior to making application pursuant to this paragraph, FiberLight will: A) in the case of construction of new conduits or erection of new poles, provide notice to other utility companies having a right-of-way in the same location in which FiberLight wishes to place its telecommunication facilities, or B) in the case of locating new cable in existing conduits or on existing pole space, obtain a conduit occupancy agreement or a pole attachment agreement from the owner of the conduit or poles. FiberLight shall construct its facilities so that they do not interfere with the existing facilities of other utility companies. Any cott markers used by FiberLight shall be flush-type cott markers and shall be approved by the City's Department of Public Works.
2. The City will use its best efforts to approve or deny any applications within thirty (30) business days after receipt,
3. FiberLight shall employ a qualified engineering firm and will be responsible to said firm for all site survey and other engineering costs. FiberLight will pay to the City the then current City permit fee at the time of filing the application for any required permit. FiberLight shall also comply with all applicable City ordinances with respect to the posting of the surety bond described in Article 14 hereof.

4. Upon application for a permit for installation of underground conduit, FiberLight will provide the City with specifications regarding conduit materials, which specifications shall meet the City's reasonable requirements as to such materials. FiberLight will notify the City at least 48 hours in advance whenever work is proposed which will interfere with or cause damage to any portion of the public right-of-way, except in cases of emergency restoration, in which case FiberLight will provide advance notice that is reasonable under the circumstances.
5. FiberLight is a member of and shall remain a member of "Miss Utility;" will comply with the "Miss Utility" notice requirements, and will provide to the City evidence of having joined "Miss Utility" before the City will issue any permit. FiberLight also will contact the City of Rockville Utilities Division at 240-314-8567 to horizontally locate all underground City utilities at least 48 hours prior to excavation.
6. FiberLight will comply with all applicable federal, state, county and City laws.
7. FiberLight will maintain all facilities constructed or installed pursuant to the permits issued under this Agreement in safe condition and in good repair.
8. During construction FiberLight will take all necessary precautions to protect persons and property against injury. After construction, FiberLight will restore the rights-of-way to substantially the same condition as existed prior to construction. Upon completion of construction, FiberLight shall provide to the City two (2) complete sets of copies of all "as-built" plans for the telecommunications facilities in paper and one set in an electronic format compatible with the City's GIS system.
9. It is expressly understood by FiberLight that this Agreement and any permits issued hereunder do not create or vest in FiberLight any easement or other ownership of real property rights on the rights-of-way. This Agreement and the permits are in the nature of a non-exclusive license which is revocable by the City to the extent such revocation is necessary to protect the public health, safety and welfare. Except as otherwise provided in Articles 10 and 16 hereof, prior to any such revocation, the City will provide FiberLight with as much written notice as possible, but in no event less than ninety (90) days.
10. If FiberLight shall be in breach of any provision of this Agreement or a permit issued hereunder, the City will provide FiberLight with a written notice of default specifying the alleged breach. FiberLight shall have thirty (30) days from receipt of notice to cure such breach, provided that if the breach, by its nature cannot be cured within said thirty (30) days, FiberLight shall not be in default if it commences curing within said thirty (30) days and thereafter continuously and diligently pursues the cure to completion. If FiberLight fails to so cure the breach, the City may declare FiberLight in default and revoke the relevant permit or permits upon ten (10) days advance written notice to FiberLight.

11. FiberLight shall indemnify and hold harmless the City from and against any and all losses, claims, suits or demands for damages to property or persons arising out of FiberLight's use of the rights-of-way, unless such loss, claim, suit or demand for damages is caused by the gross negligence or willful misconduct of the City, its employees, agents or contractors.
12. FiberLight, at its expense, will carry and keep in force and effect during the term of this Agreement including all extensions, commercial general liability insurance, automobile liability insurance and excess/umbrella liability insurance that will name the City as an additional insured and will protect the parties against losses, claims, suits, or demands for damages to property or persons arising out of FiberLight's use of the rights-of-way, with a combined single coverage limit of not less than Two Million Dollars (\$2,000,000.00). FiberLight also will carry and assign a waiver of subrogation for workers' compensation and employers' liability insurance at statutory minimums.

Endorsements reflecting the Mayor and Council of Rockville as an additional insured are required to be submitted with the insurance certificate. FiberLight's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, officers, consultants, agents and employees and any insurance or self-insurance maintained by the City, shall be excess of FiberLight's insurance and shall not be called upon to contribute with it. FiberLight will provide 45-day written notice of any change in insurance coverage.

13. FiberLight shall not assign or transfer this Agreement without the written consent of the City, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, FiberLight may assign this Agreement without the consent of the City to an entity that controls, is controlled by, or is under common control with, FiberLight; however, FiberLight shall provide the City notice of such assignment. Furthermore, nothing in this provision shall be construed as prohibiting FiberLight from entering into secured financing arrangements involving the communications systems or facilities.
14. In installing its facilities FiberLight shall satisfy all of the applicable provisions of Chapter 21 of the Rockville City Code, entitled "Streets and Public Improvements" (the "Road Code"). Prior to the issuance of any permit by the City FiberLight shall furnish a performance bond in form satisfactory to the City, and in an amount to be determined in accordance with the Road Code provisions governing such bonds, as security for the commitment of FiberLight to satisfy the Road Code and to otherwise perform the installation in compliance with this Agreement. Such performance bond shall be released upon completion of construction of the underground facilities in compliance with this Agreement; final inspection and acceptance of same by the City; and only after the performance bond shall be replaced by a maintenance bond. The maintenance bond shall remain in effect until the expiration of five (5) years (ten (10) years for boring) after completion of construction. Further, although a maintenance bond must be maintained in effect until five years (ten (10) years for boring) after

completion of construction, final inspection and acceptance of the same by the City, the City will accept a maintenance bond with a term of one year, provided the same is renewed annually and that the City receives notice at least ninety (90) days prior to the expiration of any one year term of the bond if the bonding company will not be renewing such bond for an additional one year term. If the bond is not renewed, FiberLight shall obtain a replacement maintenance bond in the same amount for an additional one year term. If the maintenance bond is not renewed and a replacement bond is not provided, FiberLight's rights to use the public right-of-way pursuant to this Agreement shall terminate.

15. Failure of either party to enforce or insist upon compliance with any provision of this Agreement shall not constitute a waiver of such provision by such party.
16. Should a conflict arise between an FiberLight facility and an existing or proposed City facility, then FiberLight shall at its sole expense, relocate or eliminate said conflicting FiberLight facility upon written notice from the City to do so and said relocation or elimination shall be completed as soon as practicable after receipt of said notice, but under no circumstances more than sixty (60) days thereafter, unless an extension of the sixty (60) day limit is specifically granted in writing by the City. The City shall use good faith efforts to designate locations for any relocated facilities that will permit FiberLight to continue to serve its existing customers. Notwithstanding the foregoing, FiberLight shall not be required to pay to the City any permit fees in connection with a relocation required by the City under this Article 16.
17. As additional consideration for the granting of the license to use the public right-of-way as set forth herein, FiberLight will provide four (4) fibers to the City in the network backbone installed within the City limits; provided, such fibers shall only be available on the network backbone. Two (2) fibers shall be available to the City on lateral routes off the network backbone, subject to availability. Fibers provided to the City pursuant to this paragraph 17 shall be dedicated solely to the City for its government use and shall not be shared with any other user of the FiberLight network. FiberLight hereby grants the City permission to connect its own fiber from any site to the fibers provided by FiberLight in either its backbone or lateral, subject to the terms detailed above. FiberLight shall perform any and all splicing of fiber to its backbone or laterals at pricing to the City no less favorable than that provided by FiberLight to any other party. The City shall not access the FiberLight network without the presence of FiberLight personnel but may install an adjacent handhole to access its fiber. FiberLight shall notify the City of where and when FiberLight installs fiber within the City rights of way, to the extent permitted by applicable nondisclosure agreements, and shall make the fiber dedicated to the City available, subject to the terms above, for connection and activation within thirty (30) days of installation.
18. Subject to Article 13, this Agreement shall extend to and bind the successors and assigns of the parties hereto.

19. Notice required under this Agreement will be addressed as follows:

If to the City:

City Manager
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

With a copy to:

Telecommunications and IT Operations Manager
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

Director of Public Works
Rockville City Hall
111 Maryland Avenue
Rockville, Maryland 20850

If to FiberLight:

General Counsel
FiberLight, LLC
11700 Great Oaks Way
Suite 100
Alpharetta, GA 30022

Maryland Operations Manager
FiberLight, LLC

7500 Greenway Center Dr Ste 300
Greenbelt, MD 20770

With a copy to:

James C. Falvey
Member
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Ave.
Suite 1200
Washington, D.C. 20006

Notices shall be mailed to the addressee by registered or certified mail, return receipt requested, with postage prepaid, or delivered by reputable courier service, with signed evidence of receipt, and shall be deemed delivered when received or refused by the addressee.

20. FiberLight shall provide to the City's Department of Public Works 24-hour, 7-day per week emergency contact information. This information shall include the emergency contact's name, title, phone number, cellular/mobile phone number, e-mail address, and mailing address. FiberLight shall provide updated information whenever it changes. If FiberLight fails to provide the information required in this paragraph 20, the City shall be relieved of any liability for any and all reasonable actions it takes to handle emergency situations, and FiberLight shall reimburse the City for any and all reasonable additional expenses the City incurs as a result of the failure of FiberLight to provide the information require in this paragraph 20.

21. This Agreement shall be governed by the laws of the State of Maryland. The parties agree that any litigation arising from this Agreement shall be brought in the Circuit Court for Montgomery County, Maryland, to the extent such court has jurisdiction, and the parties hereby waive any objection to venue in such court.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ATTEST:



FIBERLIGHT, LLC

By: 

Name: Chad Pifer

Title: Executive Vice President & General Counsel

ATTEST:

THE MAYOR AND COUNCIL OF ROCKVILLE

, City Clerk

By: _____
, City Manager